

OCT 04 2004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

re patent application of: Clark et al.

Serial No.: 10/749,955

Filed: December 31, 2003

Attorney Docket: M02A474

Title: EXTRACTION AND OXIDATION PROCESS

Group Art Unit: 1754

Examiner: TBD

Mail Stop: MISSING PARTS

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

**Petition Under 37 CFR 1.47(a) and in Response to Notice of Missing Parts of Nonprovisional Application**

Dear Sirs:

The present application was filed on December 31, 2003 naming three inventors; James Robert Clark (Clark), Benjamin R. Roberts (Roberts), and John V. Pozniak (Pozniak), such application being filed without a Declaration or Assignment.

A Notice of Missing parts of Nonprovisional Application (Notice) was mailed May 4, 2004, requiring the filing of a proper oath or declaration along with necessary fees.

In response to such Notice, the Declaration of inventors Clark and Roberts is being submitted herewith. An Assignment and Power of Attorney of the invention from inventors Clark and Roberts to The BOC Group, Inc. are also being submitted herewith.

However, inventor Pozniak can not be located and therefore signature of the Declaration and the Assignment by inventor Pozniak has not been obtained.

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on: 10/11/04 (Date)

PHYLLIS C. SKROK

Printed name of person signing this certificate

Signature of person mailing

Therefore, this petition under 37 CFR 1.47(a) is being made at this time. This petition is based on the following facts.

- 1) At the time of invention of the subject matter of the present application, inventor Pozniak was an employee of The BOC Group, Inc., and had executed an Employment Agreement with The BOC Group, Inc. stating in part that:  

I shall promptly grant and assign to the Company for its sole use and benefit any and all inventions and improvements together with all letters patent and reissues thereof that may at any time be granted for or upon any such inventions or improvement which I may make or conceive during the period of my employment.
- 2) Inventor Pozniak subsequently left the employment of The BOC Group, Inc. and at the time of receipt of the Notice, was no longer employed by The BOC Group, Inc.
- 3) A copy of the Declaration and Assignment were sent along with the application papers to inventor Pozniak on May 13, 2004, addressed to the last known address for inventor Pozniak. The package was returned as undeliverable. (A copy of the cover letter sent is attached.)
- 4) Other attempts to reach inventor Poznik have also proved unsuccessful. In particular, trying to find inventor Pozniak through other BOC Group, Inc. employees who worked with him have not been successful.

This action is necessary to preserve the rights of The BOC Group, Inc. in the invention set forth in the present application and to prevent irreparable damage to The BOC Group, Inc. In other words, absent the granting of this petition, the present application will become abandoned for failure to respond to the Notice, thereby resulting in a loss of rights in the invention being claimed.

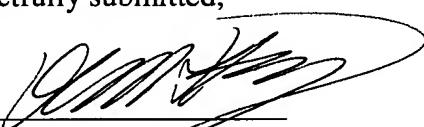
The last know address for inventor Pozniak is that on the letters noted above. In particular, such address is:

4425 Norwalk Drive #23  
San Jose, CA 95129

In light of the above showing and the payment of the fee prescribed for this petition under 37 CFR 1.17(h), grating of this petition is respectfully requested.

Further, in light of the above and the submission of the Declaration and Assignment of inventors Clark and Roberts and the payment of the appropriate fees for responding to the Notice, it is respectfully requested that all submissions herewith be accepted and that the present application be further processed and examined.

Respectfully submitted,

By: 

David A. Hey

Reg. No.: 32,351

Attorney for Applicant (s)

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Date: 10/1/04

The BOC Group, Inc.  
Legal Services-IP Dept.  
575 Mountain Avenue  
Murray Hill, NJ 07974-2064



# THE BOC GROUP

575 Mountain Avenue, Murray Hill, New Jersey 07974-2082

Tel: (908) 464-8100

May 13, 2004

Mr. John V. Pozniak  
4425 Norwalk Drive, #23  
San Jose, CA 95129

RE: U.S. Patent Application No. 10/749,955  
Filed: December 31, 2003  
Entitled: Extraction and Oxidation Process  
Case: M02A474

Dear Mr. Pozniak:

Enclosed please find a copy of the above-referenced patent application for the invention of which you are a co-inventor. Also enclosed for your execution is an inventor's Declaration to be signed (and dated) by you in blue ink; (b) an Assignment which you should please sign on the same date that you sign (and date) the Declaration, and (c) a Power of Attorney and Correspondence Address Indication Form which you should also please sign and date.

Please review the application carefully and make sure that you agree with it's contents prior to executing the Declaration.

If there are no changes to be made, read the Declaration carefully, paying particular attention to the fact that, by signing the Declaration, you acknowledge the following:

- a) To the best of your knowledge, you are the first and true inventor of the subject matter of the patent application.
- b) You owe the highest duty of candor and good faith in your dealings with the Patent and Trademark Office, and in discharge of this duty, you must disclose to the Patent and Trademark Office any information of which you are aware that is "material to examination of this application" as defined in the attached 37 CFR Section 1.56. Such information is material when, at least in part, there is a substantial likelihood that a patent examiner would consider it important in deciding whether the subject matter of the present application is patentable.

After these steps have been taken, please sign (and date) the Declaration.



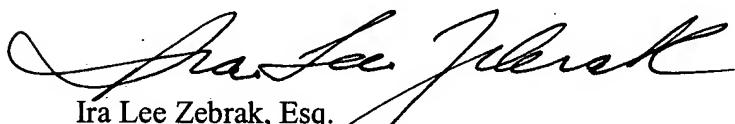
The Assignment should be signed by you and notarized at the same time that you sign and date the Declaration.

The Power of Attorney and Correspondence Address Indication Form should be signed and dated by you.

Please return the application copy with the signed Declaration, signed Assignment and signed Power of Attorney. The extra copy of the application is for your records.

On behalf of BOC Edwards, thank you once again for your submittal of the above-referenced invention record. Your interest in creating new ideas and willingness to formally document them are greatly appreciated. If you should have any questions, please feel free to telephone me.

Sincerely yours,



Ira Lee Zebrak, Esq.  
Senior Counsel - Intellectual Property  
Legal Services

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Fax: (908) 771-6159  
Assistant: Ms. Betty Lee (908) 771-6481

Enclosures

Declaration (w/application attached)  
37 CFR Section 1.56  
Assignment  
Power of Attorney and Correspondence Address Indication Form  
Application

ILZ:bjl

Ira Lee Zebrak, Esq. / Legal Services- Intellectual Property  
575 Mountain Avenue  
Murray Hill NJ 07974

UNITED STATES POSTAGE  
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# First Class Mail

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